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HIGH COURT OF CHHATTISGARH AT BILASPUR

Single Bench : Hon'ble Shri H.L. Dattu, C.J.

Writ Petition No. 2219 of 2000

Petitioner Rajgami Sampada, Rajnandgaon through – Chief Executive Officer/S.D.O. (Civil) Rajnandgaon, Distt. Rajnandgaon (MP)

versus

Respondents

1. District & Sessions Judge, Rajnandgaon (MP)
2. First Civil, Judge Class I, Rajnandgaon (MP)
3. First Civil Judge Class –II, Rajnandgaon (MP)
4. Nand Kishor Sharma S/o Omkar Kajodmal aged about 45 years, Residence of Kamptee Line, Rajnandgaon (MP)

Petition under Articles 226/227 of the Constitution of India.

Present : Shri B.P. Gupta, counsel for the petitioner.
Shri P.K. Verma, Sr. Adv. with Shri Sumit Verma, counsel for respondents No. 2 & 3.
Shri V.K. Sharma, counsel for respondent No.4.

ORAL ORDER

(Passed on 3rd May, 2007)

Defendant in Civil Suit No. 29-A/97 is the petitioner in this writ petition filed under Articles 226/227 of the Constitution of India.

(2) The reliefs sought for by the petitioner are as under :-

"1. To quash the order passed by the respondent No.1 dated 22-09-98.

2. To quash the order passed by the third respondent dated 21-09-98.

3. To quash further proceeding pending before the second respondent."

(3) The facts in nutshell are, that the 4th respondent in the writ petition was the plaintiff before the trial Court. The Civil Suit No. 29-A/97 was filed against defendants for declaration, possession and permanent injunction restraining the

defendant in the suit namely the petitioner herein from interfering with the plaintiff's peaceful possession and enjoyment over the disputed property.

(4) It is the case of the defendant / petitioner before this Court that the learned trial Judge after recording the evidence of the parties and after hearing the parties to the lis by his order dated 21-09-98 had dismissed the suit.

(5) On a complaint filed by the plaintiff before learned District & Sessions Judge, Rajnandgaon, learned Judge has transferred the Civil Suit No. 29-A/97 on the file of 3rd respondent to the file of 2nd respondent namely First Civil Judge Class-I, Rajnandgaon by invoking his power under Section 24 of the Code of Civil Procedure.

(6) The 2nd respondent after such transfer, I am informed by learned counsel Shri B.P. Gupta that nothing is done by the learned Judge and the suit is still pending consideration before the 2nd respondent.

(7) At the time of hearing of the petition, learned counsel appearing for the petitioner Shri B.P.Gupta has raised three issues for consideration and decision of this Court. They are, - the learned District Judge on a complaint filed by the plaintiff ought not to have transferred the Civil Suit pending on the file of the 3rd respondent to the 2nd respondent without the judgment and decree being set-aside by the competent Civil Court ; learned District Judge without hearing the parties to the suit could not have transferred the suit which was pending on the file of 3rd respondent to the file of 2nd respondent; and lastly, learned counsel would submit that this Court should indicate that from what stage the 2nd respondent should continue with the Civil Suit No. 29-A/97.

(8) After the petition was filed before this Court, the notices were issued to the respondents and the respondents have filed their returns. This Court had also directed the District Judge to make an enquiry and submit a report before this Court.

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(9) At this stage it is relevant to notice, that, the 3rd respondent herein on 21-09-1998 had made a note in his order sheet that the suit filed by the plaintiff/4th respondent herein is dismissed but actually on that date the judgment was not fully ready in the sense, that, it was still half way through the dictation, and even that had not been completed by the Stenographer attached to him. This is evident from the records maintained by the 3rd respondent and also the report of the learned District Judge. Judge is a public officer whose function is to declare law; to conduct the trial of causes between litigants according to legal forms and methods. Section 2(8) of the Code of Civil Procedure defines 'Judge' which states that "Judge" means the Presiding Officer of a Civil Court. Section 2(9) defines the 'Judgment' to mean the statement given by the Judge of the grounds of a decree or order. Alternatively it can be stated that the Judgment is the decision of a Court of Justice upon the respective rights and claims of the parties to an action in a suit submitted to it for determination. The word 'Judgment' denotes the reasons which the Court gives in its decision. It is a decision which affects the merits of the question between the parties by determining some right or liability and does not include a mere formal order or an order regulating the procedure in a suit. Section 2 (14) speaks of 'order' to mean the formal expression of any decision of a Civil Court which is not a decree. This formal expression can be made by the Judge only after the decision is pronounced in the open Court as required under Order XX Rule1,2 and 3 of the Code of Civil Procedure. The Code does not envisage the writing of a judgment after deciding the case. In the present case, even before the judgment was ready for pronouncement, the learned Judge makes the pronouncement of the same in the open Court by making note in the order-sheet maintained by the Court. To say the least, noting made in the order-sheet, first and foremost, disclose the ignorance of the 3rd respondent with regard to the judicial proceedings and secondly it also shows the lack of knowledge of the provisions of the Code of Civil Procedure. To put it very mildly that it is "judicial indecency".

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(10) The 3rd respondent has filed his return before this Court in which he stated that he had given dictation of part of the judgment to his Stenographer and the remaining portion had been written in his own hand writing and it was handed over to his Stenographer for being typed. According to the learned Judge, since his judgment had already leaked out to his Stenographer, he had noted in the order sheet that suit of the plaintiff is rejected. As I have already stated, before the judgment was fully ready, the 3rd respondent had no business to make a note in his order sheet that the suit of the parties is rejected.

(11) On a complaint filed by the 4th respondent, the learned District Judge has transferred the brief from the Court of the 3rd respondent to the Court of the 2nd respondent. Learned counsel appearing for the petitioner Shri B.P. Gupta would submit that under Section 24 of the CPC, learned District Judge has no authority to transfer a case which is already disposed of. In support of the stand learned counsel has invited my attention to Section 24 of the Code of Civil Procedure the said Section reads as under :-

> "**24. General power of transfer and withdrawal**.- (1) On the application of any of the parties and after notice to the parties and after hearing such of them as desired to be heard, or of its own motion without such notice, the High Court or the District Court may at any stage-
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> (a) transfer any suit, appeal or other proceeding pending before it for trial or disposal to any Court subordinate to it and competent to try or dispose of the same, or
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> (b) withdraw any suit, appeal or other proceeding pending in any Court subordinate to it, and
>
> (i) try or dispose of the same; or
>
> (ii) transfer the same for trial or disposal to any Court subordinate to it and competent to try or dispose of the same; or
>
> (iii) retransfer the same for trial or disposal to the Court from which it was withdrawn.
>
> (2) Where any suit or proceeding has been transferred or withdrawn under sub-section (1), the Court which [is thereafter to try or dispose of such suit or proceeding] may, subject to any special

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directions in the case of an order of transfer, either retry it or proceed from the point at which it was transferred or withdrawn.

[(3) For the purpose of this section,-

(a) Courts of Additional and Assistant Judges shall be deemed to be subordinate to the District Court;

(b) "proceeding" includes a proceeding for the execution of a decree or order.]

(4) The Court trying any suit transferred or withdrawn under this section from a Court of Small Causes shall, for the purposes of such suit, be deemed to be a Court of Small Causes.

[(5) A suit or proceeding may be transferred under this section from a Court which has no jurisdiction to try it.]"

(12) A perusal of Section 24 of CPC would demonstrate two things; (i) High Court or District Court on an application filed by the parties can transfer a case pending before the Court. If it is on the request made by the parties, then the provision itself would make it clear that the parties are required to be heard in the matter, or (ii) High Court or District Court *suo motu* can transfer a petition/plaint etc. and while doing so the question of hearing the parties would not arise. In the instant case, the complaint was filed by the defendant before the learned District Judge. On the basis of the complaint *suo motu* proceedings had been initiated by the learned District Judge and therefore, the question of hearing either plaintiff or the defendant would not arise. The submission made in this regard by learned counsel for the petitioner, in my opinion, is devoid of merit and therefore, requires to be rejected and it is rejected. Last submission that was made by learned counsel for the petitioner is that from what stage the learned Judge, on whose Board the file is transferred, should decide the case. The matter had been heard by the third respondent, but he had not pronounced the judgment as required under the Code of Civil Procedure. At this stage, the matter was transferred from the third respondent to second respondent. The learned Judge before whom the file is transferred has now required to hear the parties to the suit and then proceed to pass appropriate orders with the available evidence on record.

(13) In view of the above discussion, the following :

ORDER

(i) The petition is partly allowed.

(ii) The second respondent – First Civil Judge, Class-I, Rajandgaon is directed to issue appropriate notice to the parties to the *lis* and then pass appropriate orders in accordance with law, as early as possible, at any rate within two months from the date of receipt of the original records from this Court.

(iii) The Registry is directed to send back all the original records forthwith to the second respondent. The second respondent is directed to decide the suit as directed by me earlier within two months and submit a report to the Registrar General of this Court.

Ordered accordingly.

Sd/-
Chief Justice